IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 455

UNITED STATES OF AMERICA,
Appellant,

vs.

ROMUALDO CORES

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

BRIEF FOR AMICUS CURIAE

CLARK M. CLIFFORD
Amicus Curiae
1523 L Street, N. W.
Washington 5, D. C.

CARSON M. GLASS
CLIFFORD AND MILLER
Of Counsel

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Opinion Below

The District Court did not file an opinion in this case, but decided it on the authority of its opinion in *United States* v. *Tavares*, which is set forth as Appendix A, *infra*, pp. 20-21. The District Court dismissed the information orally as shown by the transcript of the proceedings contained in the record (R. 3).

Jurisdiction

The jurisdiction of this court is set forth in the brief for the United States.

Question Presented

Whether an alien crewman who willfully remains in the United States in excess of the number of days allowed by a conditional permit, in violation of 8 U.S.C. 1282 (c), is guilty of a continuing offense which may be prosecuted in any district where such crewman may be found after his permit has expired.

Constitutional Provisions and Statutes Involved

Section 252 of the Immigration and Nationality Act of 1952, 66 Stat. 220 (8 U.S.C. 1282) and other pertinent immigration statutes are set forth in Appendix B, *infra*, pp. 22-25. The applicable constitutional provisions are quoted in the text.

Interest of Amicus Curiae

Appellee is not represented by counsel. By order of the Court dated December 9, 1957, Amicus Curiae was invited to appear and present oral argument in support of the judgment below.

Statement

As is evident from the Government's statement of the case, the record below is confused as to the place the alleged offense, with which appellee was charged, was committed. In an information filed on May 7, 1957, in the United States District Court for the District of Connecticut, appellee, an alien crewman, was charged with willfully and knowingly remaining in the United States in excess of the number of days allowed by his landing permit in violation of Section 252 (c) of the Immigration

and Nationality Act of 1952 (8 U.S.C. 1282 (c). Appendix B, *infra,* p. 23).

The information alleged that defendant entered the United States on April 27, 1955, at Philadelphia, Pennsylvania, on a conditional permit granted under 8 U.S.C. Section 1282 (a) (1), and on *May 26, 1955, at Bethel, Connecticut, within the jurisdiction of the Court,* defendant did willfully and knowingly remain in excess of the number of days allowed by such permit (R. 2). [Emphasis added.]

The record is clear that appellee entered the United States on April 27, 1955, at Philadelphia. The information charges him with being in Bethel, Connecticut on May 26, 1955, the day after the maximum period of his permit had expired. However, at a hearing on June 24, 1957, Government Counsel informed the Court that appellee was not in Connecticut on May 26, 1955. Instead, appellee had been in New York for about a year before coming to Connecticut (R. 3). Counsel for the Government did not request leave to amend the information to change the date to one that he could prove appellee was in Connecticut.

After Government Counsel informed the Court that appellee was not in Connecticut on May 26, 1955, as alleged in the information, the Court dismissed the case. The Court held on the basis of its ruling in *United States* v. *Tavares,* No. 9407 Crim. (unreported, May 6, 1957) that the violation of the offense charged did not occur within the District of Connecticut, and, therefore, it had no trial jurisdiction (R. 3). Its order of dismissal was entered accordingly (R. 1).

In *Tavares,* defendant, an alien crewman, entered the United States at a Virginia port on a conditional permit to land temporarily pursuant to Section 1282 (a) (1). This permit allowed him to remain for the period of time (not exceeding twenty-nine days) during which the vessel

on which he arrived stayed in port. Defendant's vessel left port nine days after he received his permit, but defendant continued to remain in the United States. Defendant did not enter the District of Connecticut until twenty-three days after his ship sailed foreign, or thirty-two days in all after entry. On these facts the Court held that the crime of willfully remaining under Section 1282 (c) of Title 8 was committed by the defendant at the time his conditional permit expired, in this case when his ship sailed without him, and under the United States Constitution, pertinent jurisdictional statutes, and Rule 18 of the Federal Rules of Criminal Procedure, defendant could be tried only in the district where such violation took place.

The Court held in *Tavares* that when the conditional permit of the alien crewman expired, no further act was required by him or anyone else to complete the violation of willfully remaining in the United States. It, therefore, was not a violation that occurred in more than one district nor one begun in one district and completed in another so as to make it a continuing offense under 18 U.S.C. Sec. 3237 which would permit prosecution in any district where the offense was begun, continued or completed.

The Court reasoned that criminal violations of the immigration acts regulating the entry of aliens have not been regarded as continuous crimes and that this rule is recognized in Section 1329 of Title 8 which establishes the jurisdiction of the district courts over all causes, civil and criminal, arising under the Immigration and Nationality Act of 1952. This Section makes all crimes under the subchapter punishable in the district of violation with the exception of crimes under Section 1325 (false entry of aliens) and Section 1326 (reentry of deported aliens) which are made punishable where the alien is apprehended. No exception whatever is made for the crime of willfully re-

maining after expiration of a conditional permit under Section 1282 (c).

Applying the decision in *Tavares* to the instant case, it is apparent that the Court below concluded that the crime of willfully remaining in the United States beyond the expiration of the specific period of time set forth in appellee's conditional permit is committed at the instant this time expires and jurisdiction attaches exclusively in the district where the violation occurred. Therefore, when appellee entered Connecticut approximately a year after coming to the United States, he was an outlaw punishable only in the district where the crime of willfully remaining beyond a specified period of time was committed, and the District Court for the District of Connecticut could not by implication or otherwise assume jurisdiction over the violation.

Summary of Argument

A United States District Court is a court of limited jurisdiction. This jurisdiction must be expressly granted by the Constitution, treaties, or statutes of the United States. Under Article III, Sec. 2, clause 3 and Amendment VI of the Constitution, the accused in a criminal case has the right to be tried in the district wherein the crime shall have been committed. This constitutional policy has also been written into the Federal Rules of Criminal Procedure in Rule 18. In the case of crimes committed in more than one district or crimes begun in one district and completed in another, Congress has provided in 18 U.S.C. Section 3237 for prosecution in any district where such crimes were begun, continued, or completed. Congress, also, by specific venue statutes may extend the locality of an offense over the whole area in or through which it continues.

The Court below correctly construed 8 U.S.C. 1282 (c), which punishes an alien crewman who willfully remains

in the United States in excess of the number of days allowed in a conditional landing permit, as creating a crime which is non-continuing in nature since it is complete in every respect at the time the crewman willfully remains in this country after his permit expires. Furthermore, there are no specific venue provisions in the Immigration and Nationality Act of 1952 which would permit trial in the district of apprehension. Therefore, the District Court properly applied to the crime of willfully remaining beyond the expiration of the number of days in a conditional permit, the constitutional and statutory provisions fixing jurisdiction exclusively in the State and district where the violation becomes complete. On the other hand, the Government's position is that the offense of willfully remaining beyond the expiration of the time limit in appellee's permit is not completed when the permit expires, but is a continuing unlawful act under 18 U.S.C. 3237 which may be prosecuted in more than one district. Amicus contends that the judgment of the Court below is correct and the *locus delicti* of the crime is in the district where the alien crewman's permit expires and jurisdiction is fixed exclusively in that district.

A

The crime proscribed by Section 1282 (c) cannot be a continuing offense because it is completed upon the occurrence of a single event at a definite and fixed period of time. This single event or occurrence which converts the legal conduct of remaining to the illegal conduct of remaining may be either the departure of the vessel upon which the crewman arrived, or the expiration of the maximum time limit in his permit. Nothing more is needed to complete the crime of willfully remaining in excess of the number of days in any conditional permit. Although it is true that

the crewman may thereafter be illegally remaining in another district, the illegality of his conduct was fixed at the time his permit expired. In the absence of special venue provisions jurisdiction attached in the district where the violation occurred under Article III, Sec. 2, clause 3, and Amendment VI of the Constitution.

B

Criminal violations of the various immigration acts regulating the entry of aliens have not heretofore been considered by the courts as continuing crimes under 18 U.S.C. Section 3237, and it does not appear that there is any essential difference between a crime relating to entry and a crime relating to remaining after entry. Jurisdiction of a crime relating to entry has been held judicially to be fixed exclusively in the district where a single specific event occurs. This event is the *acceptance of admission* to the United States by the alien. The commission of the crime of remaining after the number of days specified in a conditional permit also depends upon the occurrence of a single event. This event is the *expiration of the time limit* in the alien crewman's conditional permit while he willfully remains in the United States. Amicus, therefore, submits that a distinction between entry crimes and the crime prohibited by Section 1282 (c) with respect to the time or place the violations become complete is unwarranted and neither are continuing crimes.

C

Congress made the crime proscribed by Section 1282 (c) punishable at the place where the violation occurs in the specific statute which establishes the jurisdiction of the district courts in all civil and criminal causes arising under

the Immigration and Nationality Act of 1952. (8 U.S.C. 1329.) The only crimes specifically made punishable in the district of apprehension are violations of Section 1325 (false entry of aliens) and Section 1326 (reentry of deported aliens). It is inadmissible to suggest that the failure of Congress in Section 1329 to make provision for trial in the district of apprehension is mere oversight. Jurisdiction cannot be conferred upon a federal court by implication and if Congress had intended the crime of willfully remaining in excess of the number of days in a conditional permit to be punishable in more than one district, it could have, and would have, left no doubt about it.

Contrary to the contention of the Government, trial in the jurisdiction where the alien crewman's permit expires would result in less hardship on the defendant than would trial in the place of apprehension. In most cases this would be the only jurisdiction where he could successfully make his defense. If through illness, accident, mistake or other unavoidable cause he involuntarily and unintentionally remained after the expiration of the number of days in his permit, it is at the place where the permit expired that the cause would ordinarily occur and where his witnesses would be found.

The convenience of the Government does not override constitutional policy in matters of jurisdiction. If a proper construction of a criminal statute results in the embarrassment of prosecutions thereunder, the remedy is in legislation and not in the extension of jurisdiction by implication or inference.

ARGUMENT

The Jurisdiction for Prosecution of an Alien Crewman Under 8 U.S.C. 1282 (c), for Willfully Remaining in the United States in Excess of the Number of Days Allowed in His Conditional Permit Is in the Judicial District Where the Permit Expires and the Crime Becomes Complete.

The Constitution prohibits the prosecution of a crime in more than one district unless Congress extends the locality of the offense which it has not done in the case of Section 1282 (c).

Jurisdiction of a federal court to enter a judgment must always be found in the written word of the Constitution, treaties or statutes of the United States. The power of a federal court to exercise authority upon a particular subject matter can never be presumed.[1] Such jurisdiction must be found in express grant. The federal courts have no common law criminal jurisdiction.[2]

Under the Constitution the accused in a criminal case has the right to be tried in "the State and district wherein the crime shall have been committed."

Article III of the Constitution, Sec. 2, clause 3, provides: "The Trial of all Crimes * * * shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed."

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[1] A United States District Court is only a court of limited jurisdiction, with such powers as specially conferred by statute. *United States* v. *McKay*, 45 F. Supp. 1007 (E. D. Mich. 1942).

[2] *United States* v. *Hudson and Goodwin*, 7 Cranch 32 (U.S. 1812); *United States* v. *Coolidge*, 1 Wheat. 415 (U.S. 1816).

It is then provided in Amendment VI: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; * * *."

This constitutional policy is written into the Federal Rules of Criminal Procedure in Rule 18, which requires trial in the district and in the *division* of the district in which an offense is committed (Appendix B, *supra,* p. 25).

As pointed out by the Court below in *Tavares, supra,* Congress has made an exception in the case of crimes committed in more than one district or crimes begun in one district and completed in another. Such crimes under 18 U.S.C. Section 3237 may be prosecuted where begun, continued, or completed. *U.S.* v. *Lombardo,* 241 U.S. 73, 77 (1916). Congress may, also, by utilizing the doctrine of a continuing offense provide that the locality of a crime shall extend over the whole area through which force propelled by an offender operates. *United States* v. *Johnson,* 323 U.S. 273, 275 (1944). However, as also stated in the *Johnson Case,* 323 U.S., at 276, "It is significant that when Congress desires to give a choice of trial, it does so by specific venue provisions giving jurisdiction to prosecute in any criminal court of the United States through which a process of wrongdoing moves."

As will be shown more fully later, in the case of the crime proscribed by Section 1282 (c) no specific venue provisions exist which make the crime of willfully remaining in excess of the number of days allowed in an alien crewman's landing permit punishable in the district of apprehension. It appears, therefore, that the Government, in order to extend the locality of the crime, is attempting to

bring the offense under Section 3237 as a continuing offense which is initiated when the permit expires and continues until the alien leaves the country or is apprehended.

The Court below in *Tavares, supra,* pointed out the clear distinction between a continuing offense punishable in more than one district, and illegality of a continuous nature which under the provisions of the Constitution is punishable only in the State and district where the crime is committed. As held by the Court, a violation of Section 1282 (c) is complete in every respect when an alien crewman willfully remains in this country after the expiration of his conditional permit. Although his presence in the country thereafter may be continuously illegal, he can be tried, under the Constitution, only in the district where the violation occurred.[3] See *Johnston* v. *United States,* 351 U.S. 215 (1956). As stated in *United States* v. *Bink,* 74 F. Supp. 603, 612 (D. Ore. 1947):

> "The feeling for indictment and trial in the locale where the act was committed is entirely realistic. All law enforcement is conditioned by the mores of the community in which the act took place. The place of residence of a defendant has, on the other hand, no essential relation to the problem. Therefore, trial at the residence of accused has never been prescribed."

A. The Crime Proscribed by Section 1282 (c) Cannot Be a Continuing Offense Because It Is Completed Upon the Happening of a Single Event or Occurrence.

Contrary to the position of the Government, the very statement of the crime prohibited by Section 1282 (c) shows that it is not a continuous crime. Amicus contends that the Government misconceives the conduct prohibited by the statute. The offense proscribed is not merely "willfully

[3] See also *United States* v. *Smith,* 173 Fed. 227 (D. Ind. 1909).

remaining." It is "willfully remaining *in excess of the number of days allowed in any conditional permit* issued under subsection (a) of this section * * *." [Emphasis added.]

Amicus does not quarrel with the dictionary definitions of the word "remain" cited by the Government. Concededly, the word implies elements of continuity. So also does the crime of cohabitation which implies a continuous living together by two persons in a status resembling that of the marital relationship.[4] However, it is not alone "willfully remaining" in the United States that constitutes the crime under Section 1282 (c). It is willfully remaining after the occurrence of a definite and fixed period of time. The happening of a single event at a single time permanently determines the illegality of the alien crewman's conduct. This single event may be either (1) the departure of the vessel or aircraft upon which the crewman arrived, or (2) the expiration of the maximum twenty-nine day time limit in case his permit is received under Section 1282 (a) (1). If his permit is received under Section 1282 (a) (2), the single event or occurrence which converts legal conduct to illegal conduct is the expiration of the twenty-nine day maximum period he is permitted to land. Nothing more is needed to complete the crime of willfully remaining *in excess of the number of days allowed in any conditional permit.*

To illustrate the correctness of the decision of the Court below, it is only necessary to examine the nature of the alien crewman's conduct from the time he arrives in the

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[4] See 14 C.J.S. p. 1312. Although the Government compares the crime of cohabitation to the crime of willfully remaining in excess of a fixed period of time, the illegal and continuous living together by two persons which constitutes the crime of cohabitation does not depend for its commission on any specific and fixed time limitation but is found in the circumstances and condition of the parties.

United States until he has committed the crime prohibited by Section 1282 (c). When his vessel enters United States waters with the crewman aboard, he can be said logically to be staying or "*remaining*" in the United States so long as his vessel stays or remains, although he may not have legally "entered" the United States as entry is defined by law.[5] When the crewman has been granted and has "*agreed to accept*"[6] a permit to land temporarily under Section 1282 (a), he is *willfully and legally* remaining in the United States. At the instant the number of days allowed in the permit expires, and only at this instant, does his legal conduct of willfully and intentionally remaining become an act prohibited by law. Then and only then has he committed the crime of *willfully and illegally* remaining in this country.

By its very nature, the crime of willfully remaining, after the expiration of a fixed number of days, cannot be committed in more than one district and become a continuing crime under 18 U.S.C. Section 3237. It is completed in the district where the conditional permit expires. It is not begun in one district and completed in another. Although it is true that the crewman may thereafter be illegally and willfully remaining in another district, as held by the Court below, the illegality of his conduct was fixed at the time his permit expired, since it was there that the crime was committed and all elements thereof became complete. In the absence of special venue provisions permitting trial in the district of apprehension or otherwise enlarging the locality of the crime, Constitutional principles clearly

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[5] *Lazarescu* v. *United States*, 199 F.2d 898, 900-901 (C.C.A. 4, 1952).

[6] See 8 U.S.C. 1282 (a), Appendix B, *infra*, p. 22, which provides as a condition of entry that an alien crewman must agree to accept any conditional permit granted him in the discretion of an immigration officer.

appear to compel trial in the jurisdiction where the crewman's conditional permit expired and only in such jurisdiction. See *United States* v. *Johnson, supra; Johnston* v. *United States, supra.*

B. Criminal Violations of the Immigration Acts Regulating the Entry of Aliens Have Never Been Regarded as Continuing Crimes Under 18 U.S.C. Section 3237.

In support of its decision that the crime proscribed by Section 1282 (c) of willfully remaining in the United States in excess of the number of days allowed in a conditional permit is not a continuing offense, the lower court cited the following parallel cases which show that similar crimes relating to the regulation of the entry of aliens have not been regarded by the courts as being continuing under 18 U.S.C. 3237: *Lazarescu* v. *United States,* 199 F.2d 898 (C.C.A. 4, 1952); *United States* v. *Vasilatos,* 112 F. Supp. 111 (E. D. Pa. 1953), aff. 209 F.2d 195 (C.C.A. 3, 1954) (fraudulently procuring reentry into the United States after prior deportation); *U.S.* v. *Capella,* 169 Fed. 890 (N. D. Cal. 1909) (introducing into the country a minor unaccompanied by his parents); *Ex parte Lair,* 177 Fed. 789 (D. Kan. 1910), rev. on other grounds 195 Fed. 47, cert. den. 229 U.S. 609; and *U.S.* v. *Lavoie,* 182 Fed. 943 (W. D. Wash. 1910) (importation of female for immoral purposes).

The statutes involved in the foregoing cases regulate the *entry* of aliens into the United States under various conditions but so in fact does Section 1282 (a). Furthermore, it does not appear to Amicus that there is any essential difference between a crime relating to *entering,* the illegality of which depends upon a specific event, and a crime relating to *remaining* after entry, the illegality of which depends upon the happening of a specific event.

For example, in *Lazarescu* v. *United States, supra*, the Fourth Circuit held that "entry," within the meaning of the statute forbidding unlawful reentry after deportation, is something different from the mere physical arrival or presence of the alien in a port of the United States. To constitute a crime relating to entry, there must be both formal admission by the Immigration Inspector and acceptance of such admission by the alien. As stated by the Court (199 F.2d, at 900-901):

> "The act of the Inspector in admitting appellant did not, of course, constitute the crime of which appellant was guilty; it simply removed the restraint on defendant which prevented his presence in the port of Baltimore constituting a crime on his part. The port and harbor of Baltimore is territory of the United States. Entry into that territory even in a vessel amounted to a violation of the act unless appellant was under restraint which prevented his departing from the vessel. *When he accepted admission so that this restraint was no longer operative, the crime of entering in violation of the statute was complete.*" [Emphasis added.]

On the foregoing reasoning, the Court held that the District of Maryland was the proper venue for the prosecution of an alien who accepted admission aboard a vessel in Baltimore harbor, although he remained aboard ship until it reached Norfolk, Virginia.

It was in the harbor at Baltimore that the violation was committed and all elements of the crime, including venue, became fixed. Similarly, Amicus submits that the lawful presence of an alien crewman in the United States holding a valid permit under Section 1282 (a) becomes unlawful when the period of time fixed by his permit expires. It is then that the crime of willfully remaining is completed and

jurisdiction is fixed exclusively in the district where such violation occurred.

C. Congress Did Not Make the Crime Proscribed by Section 1282 (c) Punishable in the District of Apprehension and Jurisdiction in Such District Cannot Be Conferred by Implication.

Section 279 of the Immigration and Nationality Act of 1952 (8 U.S.C. 1329) establishes the jurisdiction of the district courts of the United States of all causes, civil and criminal, arising under the Act. It provides in pertinent part:

> "Notwithstanding any other law, such prosecutions or suits may be instituted at any place in the United States at which the violation may occur or at which the person charged with a violation under sections 1325 or 1326 of this title may be apprehended."

Sections 1325 and 1326 of Title 8 of the United States Code are set forth in Appendix B, *infra,* pages 23-24. Section 1325 relates to false entry of aliens and Section 1326 relates to the reentry of deported aliens. These crimes, *and only these crimes,* are punishable in the district of apprehension under the specific language of the statute. All other crimes under the subchapter, including the crime prohibited by Section 1282 (c) are punishable in the place where the violation occurs.

It appears that had Congress intended that the crime of willfully remaining in excess of the number of days in a conditional landing permit should be punishable in the district of apprehension, it would have left no doubt about it. Undoubtedly, Congress has plenary power in this field, and it could have provided an exception for violations of Section 1282 (c) and specifically conferred jurisdiction on the district of apprehension had it seen fit to do so.

The situation here is comparable to that in *United States* v. *Johnson, supra*, in which this Court declined to extend the doctrine of a continuing offense to an Act of Congress which contained no specific venue provisions for trial in any district through which goods were shipped in contravention of the Act. The Court stated (323 U.S., at 276-277):

> "The absence of such a provision would in itself be significant. Its significance is enhanced when it appears that the attention of Congress was directed by the Postmaster General to the desirability of authority for a discretionary trial either at the place of shipment or place of receipt. * * *
>
> "In view of the keen awareness of enforcing officials as well as that of the members of the Committee on Interstate Commerce of the problems raised by venue in criminal trials, *it is inadmissible to suggest either oversight on the part of Congress in failing to make provision for choice of venue or to make the cavalier assumption that that which is specifically provided for in other enactments—i.e. trial in more than one district—was authorized but through parsimony of language left unexpressed in the Federal Denture Act.*" [Emphasis added.]

It is believed that the considerations which prompted the Court in *Johnson* to decline to sanction the unrestricted construction of venue for which the Government contended are present in this case in large degree.

Jurisdiction is never conferred by implication, and in all courts of the United States the presumption is that a cause is without the jurisdiction unless an express grant is shown. *United States* v. *Bink, supra*, 74 F. Supp., at 610-611. Nor can the jurisdiction of a court be enlarged by inferences from the law or doubtful construction of its

terms. *In Re Bonner*, 151 U.S. 242, 256 (1893). Amicus submits that the court below was correct in declining to take jurisdiction of a violation that occurred in another district, in the absence of specific venue provisions.

The Government contends that the fixing of venue at the place where an alien crewman's permit expires would create a situation of hardship on him, since in many cases both he and his witnesses would be forced to be transported to a distant place where he was not residing and where he and his witnesses were complete strangers. The weakness of this argument in the case of an alien crewman is patent. His crime depends solely upon the expiration of the time limit in his conditional permit. If for any reason he involuntarily or unintentionally overstayed his permit under circumstances which would constitute a defense to an action against him under Section 1282 (c), the district of violation would be the most convenient and, in many cases, the only jurisdiction in which he could successfully make his defense. An alien crewman might involuntarily remain in this country in excess of the number of days allowed in his permit through illness, accident, mistake, or some other unavoidable cause. If so, the cause would almost invariably occur at the place his permit expired, and proof of the cause would be found at the place where his permit expired. To be tried in a jurisdiction remote from that where the unavoidable accident, injury or mistake occurred which caused the seaman to overstay his leave could make it impossible, from a realistic standpoint, for him to defend himself.

Much is said by the Government concerning the difficult burden which would be placed on it if venue of crimes under Section 1282 (c) is held to be in the district where the alien crewman's permit expires. (Government Brief, pp. 20-21.) However, the convenience of the Government has

not been held to be a factor which overrides Constitutional policy in matters of jurisdiction. *Johnston* v. *United States, supra; United States* v. *Johnson, supra; United States* v. *Lombardo, supra; United States* v. *Chiarito,* 69 F. Supp. 317, 324 (D. Ore. 1946). In any event, as pointed out in *Lombardo,* if a statute as properly construed deprives the Government of necessary jurisdiction, this defect can be corrected by legislation.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the District Court for the District of Connecticut should be affirmed.

CLARK M. CLIFFORD
Amicus Curiae

CARSON M. GLASS
CLIFFORD AND MILLER
Washington, D. C.
Of Counsel

FEBRUARY 1958

APPENDIX A

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

No. 9407 Criminal

UNITED STATES OF AMERICA

v.

HIGINO DE OLIVEIRA TAVARES

Memorandum of Decision

The defendant, an alien crewman, entered the United States at Newport News, Virginia, July 14, 1955, on a conditional permit to land pursuant to Sec. 1282 (a) (1) of Title 8 U.S.C. The defendant's ship sailed foreign on July 23, 1955, but the defendant knowingly and willfully remained in the United States. He came to the District of Connecticut 32 days after entry. All of the above facts were stipulated in this action based on an information charging the defendant with violation of Sec. 1282 (c), which punishes as a misdemeanant any alien crewman who willfully remains in the United States in excess of the number of days allowed in any conditional permit.

The sole question before this court is whether this action was properly brought in this district. Art. III, Sec. 2, Par. 3, and Amendment VI of the United States Constitution, Sec. 1329 of Title 8, U.S.C. and Rule 18 of the Federal Rules of Criminal Procedure require that a trial be held in the district in which the violation took place. The exception to this rule is when the commission of the alleged offense took place in more than one district, 18 U.S.C. Sec. 3237, as in cases "where a crime consists of distinct parts which have different localities * * * or where it may

be said there is a continuously moving act commencing with the offender and hence ultimately consummated through him * * * or where there is a confederation in purpose between two or more persons, its execution being by acts elsewhere * * *." *U. S.* v. *Lombardo,* 241 U.S. 73, 77.

Such does not appear to be the case here. The defendant violated Sec. 1282 (c) when he remained in this country after the expiration of his conditional permit, i.e. when his ship sailed. No further act by him or anyone else was required to complete the violation. While it is true that the illegality of defendant's presence in this country is continuous, *U. S.* v. *Anastasio* (D. N.J. 1954), 120 F.Supp. 435, rev. on other grounds 226 F.2d 912, cert. den. 351 U.S. 931, criminal violations of the immigration acts regulating the entry of aliens have not been regarded as continuous crimes. Cf. *Lazarescu* v. *U.S.* (4 Cir. 1952), 199 F.2d 898; *U.S.* v. *Vasilatos* (E. D. Pa. 1953), 112 F.Supp. 111, aff. 209 F.2d 195 (fraudulently procuring entry into this country after prior deportation); *U.S.* v. *Capella* (N. D. Cal. 1909), 169 Fed. 890 (introducing into country a minor unaccompanied by his parents); *U.S.* v. *Lair* (D. Kan. 1910), 177 Fed. 789, rev. on other grounds 195 Fed. 47, cert. den. 229 U.S. 609; *U.S.* v. *Lavoie* (W. D. Wash. 1910), 182 Fed. 943 (importation of female for immoral purposes). This rule is apparently recognized in Sec. 1329 of Title 8 wherein the venue for all crimes under this subchapter is placed at the district of violation with the exception of crimes of fraudulent entry and entry after deportation, which may be tried in the district of apprehension. Such a distinction would be meaningless if violations such as the one in issue were regarded as continuous.

The information against the defendant is dismissed as brought in the improper district.

Dated at New Haven, Connecticut, this 6th day of May 1957.

J. Joseph Smith,
United States District Judge.

APPENDIX B

1. Section 252 of the Immigration and Nationality Act of 1952, 66 Stat. 220 (8 U.S.C. 1282), provides (as it appears in the United States Code):

PERIOD OF TIME

(a) No alien crewman shall be permitted to land temporarily in the United States except as provided in this section and sections 1182 (d) (3), (5) and 1283 of this title. If an immigration officer finds upon examination that an alien crewman is a nonimmigrant under paragraph (15) (D) of section 1101 (a) of this title and is otherwise admissible and has agreed to accept such permit, he may, in his discretion, grant the crewman a conditional permit to land temporarily pursuant to regulations prescribed by the Attorney General, subject to revocation in subsequent proceedings as provided in subsection (b) of this section, and for a period of time, in any event, not to exceed—

(1) the period of time (not exceeding twenty-nine days) during which the vessel or aircraft on which he arrived remains in port, if the immigration officer is satisfied that the crewman intends to depart on the vessel or aircraft on which he arrived; or

(2) twenty-nine days, if the immigration officer is satisfied that the crewman intends to depart, within the period for which he is permitted to land, on a vessel or aircraft other than the one on which he arrived.

REVOCATION; EXPENSES OF DETENTION

(b) Pursuant to regulations prescribed by the Attorney General, any immigration officer may, in his discretion, if he determines that an alien is not a bona fide crewman, or does not intend to depart on the vessel or aircraft which brought him, revoke the conditional permit to land which was granted such

crewman under the provisions of subsection (a) (1) of this section, take such crewman into custody, and require the master or commanding officer of the vessel or aircraft on which the crewman arrived to receive and detain him on board such vessel or aircraft, if practicable, and such crewman shall be deported from the United States at the expense of the transportation line which brought him to the United States. Until such alien is so deported, any expense of his detention shall be borne by such transportation company. Nothing in this section shall be construed to require the procedure prescribed in section 1252 of this title to cases falling within the provisions of this subsection.

PENALTIES

(c) Any alien crewman who willfully remains in the United States in excess of the number of days allowed in any conditional permit issued under subsection (a) of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than $500 or shall be imprisoned for not more than six months, or both.

2. Section 275 of the Immigration and Nationality Act of 1952, 66 Stat. 229 (8 U.S.C. 1325) provides (as it appears in the United States Code):

Any alien who (1) enters the United States at any time or place other than as designated by immigration officers, or (2) eludes examination or inspection by immigration officers, or (3) obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact, shall, for the first commission of any such offenses, be guilty of a misdemeanor and upon conviction thereof be punished by imprisonment for not more than six months, or by a fine of not more than $500, or by both, and for a subsequent commission of any such offenses shall be guilty of a felony and upon conviction thereof shall be punished by imprisonment for not more than two years, or by a fine of not more than $1,000, or both.

3. Section 276 of the Immigration and Nationality Act of 1952, 66 Stat. 229 (8 U.S.C. 1326) provides (as it appears in the United States Code):

Any alien who—

(1) has been arrested and deported or excluded and deported, and thereafter

(2) enters, attempts to enter, or is at any time found in, the United States, unless (A) prior to his reembarkation at a place outside the United States or his application for admission from foreign contiguous territory, the Attorney General has expressly consented to such alien's reapplying for admission; or (B) with respect to an alien previously excluded and deported, unless such alien shall establish that he was not required to obtain such advance consent under this chapter or any prior Act,

shall be guilty of a felony, and upon conviction thereof, be punished by imprisonment of not more than two years, or by a fine of not more than $1,000, or both.

4. Section 279 of the Immigration and Nationality Act of 1952, 66 Stat. 230 (8 U.S.C. 1329), provides (as it appears in the United States Code):

> The district courts of the United States shall have jurisdiction of all causes, civil and criminal, arising under any of the provisions of this subchapter. It shall be the duty of the United States attorney of the proper district to prosecute every such suit when brought by the United States. Notwithstanding any other law, such prosecutions or suits may be instituted at any place in the United States at which the violation may occur or at which the person charged with a violation under sections 1325 or 1326 of this title may be apprehended. No suit or proceeding for a violation of any of the provisions of this subchapter shall be settled, compromised, or discontinued without the consent of the court in which it is pending and any such settlement, compromise, or discontinuance shall be entered of record with the reasons therefor.

5. 18 U.S.C. 3237 (62 Stat. 826) provides in part:

> Except as otherwise expressly provided by enactment of Congress, any offense against the United States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued, or completed.

6. Rule 18 of the Federal Rules of Criminal Procedure provides:

> Except as otherwise permitted by statute or by these rules, the prosecution shall be had in a district in which the offense was committed, but if the district consists of two or more divisions the trial shall be had in a division in which the offense was committed.